State of Arizona House of Representatives Forty-fifth Legislature First Regular Session 2001

CHAPIER 382

HOUSE BILL 2016

AN ACT

REPEALING SECTIONS 13-1409, 13-1411 AND 13-1412, ARIZONA REVISED STATUTES; AMENDING SECTIONS 13-4062, 13-4063 AND 13-4438, ARIZONA REVISED STATUTES; AMENDING SECTION 31-281, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2000, CHAPTER 189, SECTION 35; AMENDING SECTIONS 41-1758.03 AND 43-1001, ARIZONA REVISED STATUTES; RELATING TO INTERPERSONAL AND GOVERNMENTAL RELATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)



 Be it enacted by the Legislature of the State of Arizona:

Section 1. Repeal

Sections 13-1409, 13-1411 and 13-1412, Arizona Revised Statutes, are repealed.

Sec. 2. Section 13-4062, Arizona Revised Statutes, is amended to read: 13-4062. Anti-marital fact privilege; other privileged communications

A person shall not be examined as a witness in the following cases:

- 1. A husband for or against his wife without her consent, nor a wife for or against her husband without his consent, as to events occurring during the marriage, nor can either, during the marriage or afterwards, without consent of the other, be examined as to any communication made by one to the other during the marriage. These exceptions do not apply in a criminal action or proceeding for a crime committed by the husband against the wife, or by the wife against the husband, nor in a criminal action or proceeding against the husband for abandonment, failure to support or provide for or failure or neglect to furnish the necessities of life to the wife or the minor children. Either spouse, at his or her request, but not otherwise, may be examined as a witness for or against the other in a prosecution for an offense listed in section 13-604, subsection V, paragraph 3, for bigamy or adultery, committed by either spouse, or for sexual assault the crime against nature or any similar offense, committed by the husband.
- 2. An attorney, without consent of the attorney's client, as to any communication made by the client to the attorney, or the attorney's advice given in the course of professional employment.
- 3. A clergyman or priest, without consent of the person making the confession, as to any confession made to the clergyman or priest in his professional character in the course of discipline enjoined by the church to which the clergyman or priest belongs.
- 4. A physician or surgeon, without consent of the physician's or surgeon's patient, as to any information acquired in attending the patient which was necessary to enable the physician or surgeon to prescribe or act for the patient.
 - Sec. 3. Section 13-4063, Arizona Revised Statutes, is amended to read: 13-4063. Competency of female concerned in certain offenses:

 effect of marriage to accused

In a prosecution for rape, abduction, seduction, pandering, open and notorious cohabitation, receiving earnings of a prostitute, transporting a female for immoral purposes, forcing a woman to marry, defiling a woman, inveigling or enticing a female into a house of ill-fame or to have illicit carnal relation with a man, the female concerned in the offense is a competent witness to testify to any and all matters, including conversations with the accused, or by him with third persons in her presence, notwithstanding her having married the accused either before or after the commission of the offense charged.

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Sec. 4. Section 13-4438, Arizona Revised Statutes, is amended to read: 13-4438. <u>Deoxyribonucleic acid testing: exception</u>

- A. Before a person is released and within thirty days after the arrival of a person who is accepted under the interstate compact for the supervision of parolees and probationers, the state department of corrections shall secure a blood sample sufficient for deoxyribonucleic acid testing and extraction from the person if the person was convicted of an offense listed in this section or an attempt to commit an offense listed in this section and was sentenced to a term of imprisonment. The state department of corrections shall transmit the sample to the department of public safety. A person who is accepted for interstate parole supervision by this state shall pay for the costs of the testing.
- B. Before a person is released, the county jail detention facility shall secure a blood sample sufficient for deoxyribonucleic acid testing and extraction from the person if the person was convicted of or adjudicated delinquent for an offense listed in this section or an attempt to commit an offense listed in this section and was sentenced to a term of incarceration in a county jail detention facility or a county juvenile detention facility. The county jail detention facility shall transmit the sample to the department of public safety.
- C. Within fifteen days after a person is convicted or adjudicated delinquent, a county probation department shall secure a blood sample sufficient for deoxyribonucleic acid testing and extraction from the person if the person is convicted of or adjudicated delinquent for an offense listed in this section or an attempt to commit an offense listed in this section and is sentenced to or placed on a term of probation. The county probation department shall transmit the sample to the department of public safety.
- D. Within thirty days after the arrival of a person who is accepted under the interstate compact for the supervision of parolees and probationers, a county probation department shall secure a blood sample sufficient for deoxyribonucleic acid testing and extraction from the person if the person was convicted of an offense listed in this section or an attempt to commit an offense listed in this section and was sentenced to a term of probation. The county probation department shall transmit the sample to the department of public safety. A person who is accepted for interstate probation supervision by this state shall pay the cost of testing.
- E. Before the release of a committed youth as defined in section 41-2801, the department of juvenile corrections shall secure a blood sample sufficient for deoxyribonucleic acid testing and extraction from the youth if the youth was adjudicated delinquent for an offense listed in this section or an attempt to commit an offense listed in this section and was committed to a secure care facility. The department of juvenile corrections shall transmit the sample to the department of public safety.
- F. If a juvenile is accepted by the Arizona department of juvenile corrections pursuant to the interstate compact on juveniles and is

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adjudicated for an offense listed in this section, the compact administrator shall request that the sending state impose as a condition of supervision that the juvenile submit a blood sample sufficient for deoxyribonucleic acid testing within thirty days of arrival in this state. If the sending state does not impose that condition, the department of juvenile corrections shall request a blood sample sufficient for deoxyribonucleic acid testing within thirty days of the juvenile's arrival in this state. The department of juvenile corrections shall transmit the sample to the department of public safety.

- G. Notwithstanding subsections A through F of this section, the department of public safety shall not secure a blood sample if the scientific criminal analysis section of the department has previously made a deoxyribonucleic acid analysis of the person's blood pursuant to this section and maintains a report of the results.
 - H. The department of public safety shall do all of the following:
- 1. Conduct or oversee through mutual agreement an analysis of the samples that it receives.
- 2. Make and maintain a report of the results of each deoxyribonucleic acid analysis.
 - 3. Maintain blood samples for at least thirty-five years.
- I. This section applies to persons who are convicted of or adjudicated delinquent for the following offenses:
- 1. A violation of or an attempt to violate section 13-1403, 13-1404, 13-1405, 13-1406, 13-1410, 13-1411, 13-1412, 13-1417, 13-3608, 13-3821, 13-3822 or 13-3824.
- 2. Beginning on January 1, 2001, a violation of or an attempt to violate title 13, chapter 11, section 13-1507 or section 13-1508.
- 3. Beginning on January 1, 2002, any offense involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury as provided in section 13-604.
- Sec. 5. Section 31-281, Arizona Revised Statutes, as amended by Laws 2000, chapter 189, section 35, is amended to read:
 - 31-281. Deoxyribonucleic acid identification; sexual offenses
- A. A person who is convicted of or adjudicated delinquent for a sexual offense or attempt to commit a sexual offense as provided in section 13-1403, 13-1404, 13-1405, 13-1406, 13-1410, 13-1411, 13-1412, 13-1417 or 13-3608 or who is convicted of or adjudicated delinquent for a violation of section 13-3821, 13-3822, 13-3824, 13-3552, 13-3553 or 13-3554 and any person who is accepted under the interstate compact for the supervision of parolees and probationers and has arrived in this state shall submit to deoxyribonucleic acid testing for law enforcement identification purposes. The department of public safety shall maintain reports of the tests.
- B. A person who is tested pursuant to subsection A of this section and who has sufficient financial ability shall pay for the costs of the testing.

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The cost to the person shall not exceed five hundred dollars. All monies received pursuant to this subsection shall be transmitted to the state treasurer for deposit in the Arizona deoxyribonucleic acid identification system fund established by section 41-2419.

- C. If a juvenile is adjudicated delinquent and is tested pursuant to subsection A of this section, the results of the test may be used for any law enforcement identification purpose, including adult prosecutions.
- Sec. 6. Section 41-1758.03, Arizona Revised Statutes, is amended to read:

41-1758.03. Fingerprint clearance cards; issuance

- A. On receiving the state and federal criminal history record of a person, the division shall compare the record with the list of criminal offenses that preclude the person from receiving a class one fingerprint clearance card. If the person's criminal history record does not contain any of the offenses listed in subsections B and C of this section, the division shall issue the person a class one fingerprint clearance card.
- B. A person who is awaiting trial on or who has been convicted of committing one or more of the following offenses in this state or similar offenses in another state or jurisdiction is precluded from receiving a class one fingerprint clearance card:
 - 1. Sexual abuse of a minor.
 - 2. Sexual abuse of a vulnerable adult.
 - Incest.
 - 4. First or second degree murder.
 - 5. Kidnapping.
 - 6. Arson.
 - 7. Sexual assault.
 - 8. Sexual exploitation of a minor.
 - 9. Sexual exploitation of a vulnerable adult.
- 10. Commercial sexual exploitation of a minor.
- 31 11. Commercial sexual exploitation of a vulnerable adult.
- 12. Felony offenses involving sale, distribution or transportation of, offer to sell, transport or distribute or conspiracy to sell, transport or distribute marijuana, dangerous drugs or narcotic drugs.
 - 13. Robbery.
 - 14. Child prostitution as prescribed in section 13-3212.
- 37 15. Child abuse.
 - 16. Abuse of a vulnerable adult.
- 39 17. Sexual conduct with a minor.
 - 18. Molestation of a child.
- 41 19. Molestation of a vulnerable adult.
- 42 20. Manslaughter.
- 43 21. Aggravated assault.
- 22. A dangerous crime against children as defined in section 45 13-604.01.

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- 1 23. Exploitation of minors involving drug offenses.
- 2 24. Felony offenses involving contributing to the delinquency of a minor.
 - 25. Taking a child for the purposes of prostitution as defined in section 13-3206.
 - C. A person who is awaiting trial on or who has been convicted of committing one or more of the following offenses is precluded from receiving a class one fingerprint clearance card, except that the person may petition the board of fingerprinting for a good cause exception pursuant to section 41-619.55:
 - 1. Endangerment.
 - 2. Threatening or intimidating.
- 13 3. Assault.
 - 4. Unlawfully administering intoxicating liquors, narcotic drugs or dangerous drugs.
 - 5. Assault by prisoners with intent to incite a riot or participate in a riot.
 - 6. Assault by vicious animals.
 - 7. Drive by shooting.
 - 8. Assaults on officers or fire fighters.
 - Discharging a firearm at a structure.
- 22 10. Indecent exposure.
- 23 11. Public sexual indecency.
- 24 12. Lewd and lascivious acts.
- 25 13. 12. Criminal damage.
- 26 14. 13. Aggravated criminal damage.
- 27 15. 14. Theft.
- 28 16. 15. Unlawful use of means of transportation.
- 29 $\frac{17}{1}$ 16. Theft by extortion.
- 30 18. 17. Shoplifting.
- 31 19. 18. Unlawful failure to return rented property.
- 32 20. 19. Issuing a bad check.
- 33 21. 20. Forgery.
 - 22. 21. Criminal possession of a forgery device.
- 35 23. 22. Obtaining a signature by deception.
- 36 24. 23. Criminal impersonation.
- 39 26. 25. Receipt of anything of value obtained by fraudulent use of 40 a credit card.
 - 27. 26. Forgery of a credit card.
- 42 28. 27. Fraudulent use of a credit card.
- 43 29. 28. Possession of any machinery, plate or other contrivance or 44 incomplete credit card.

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- 1 30. 29. False statement as to financial condition or identity to 2 obtain a credit card.
 - 31. 30. Fraud by persons authorized to provide goods or services.
 - 32. 31. Credit card transaction record theft.
 - 33. 32. Bribery of a public servant.
- 6 34. 33. Trading in public office.
- 7 35. 34. Commercial bribery.
- 8 36. 35. Improper influence on a public officer or employee for 9 consideration.
- 10 37. 36. Misconduct involving weapons.
- 11 38. 37. Misconduct involving explosives.
- 12 39. 38. Depositing explosives.
- 13 40. 39. Misconduct involving simulated explosive devices.
- 14 41. 40. Concealed weapon violation.
- 15 42. 41. Enticement of any persons for purposes of prostitution.
- 16 43. 42. Procurement by false pretenses of any person for purposes 17 of prostitution.
- 18 44. 43. Procuring or placing persons in a house of prostitution.
- 19 45. 44. Receiving earnings of a prostitute.
- 20 46. 45. Causing one's spouse to become a prostitute.
 - 47. 46. Detention of persons in a house of prostitution for debt.
- 22 48. 47. Keeping or residing in a house of prostitution or employment 23 in prostitution.
 - 49. 48. Pandering.
 - 50. 49. Transporting persons for the purpose of prostitution or other immoral purposes.
 - 51. 50. Possession and sale of peyote.
- 28 52. 51. Possession and sale of a vapor-releasing substance 29 containing a toxic substance.
 - 53. 52. Sale of precursor chemicals.
- 31 54. 53. Possession, use or sale of marijuana, dangerous drugs or 32 narcotic drugs.
- 33 55. 54. Manufacture or distribution of an imitation controlled 34 substance.
- 35 56. 55. Manufacture or distribution of an imitation prescription-36 only drug.
- 37 57. 56. Manufacture or distribution of an imitation over-the-counter 38 drug.
- 39 58. 57. Possession or possession with intent to use an imitation 40 controlled substance.
- 59. 58. Possession or possession with intent to use an imitation prescription-only drug.
- 60. 59. Possession or possession with intent to use an imitation over-the-counter drug.

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1 61. 60. Manufacture of certain substances and drugs by certain 2 means.

62. 61. Adding poison or other harmful substance to food, drink or medicine.

63. 62. Dropping objects from an overpass.

64. 63. A criminal offense involving criminal trespass and burglary under title 13, chapter 15.

65. 64. A criminal offense involving business and commercial frauds under title 13, chapter 22.

66. 65. A criminal offense involving organized crime and fraud under title 13, chapter 23.

67: 66. Child neglect.

68. 67. Neglect of a vulnerable adult.

69. 68. Misdemeanor offenses involving contributing to the delinquency of a minor.

70. 69. A violation of section 28-1381, 28-1382 or 28-1383.

71. 70. Offenses involving domestic violence.

- D. Notwithstanding subsection C of this section, on receiving written notice from the board of fingerprinting that a good cause exception was granted pursuant to section 41-619.55, the division shall issue a class one fingerprint clearance card to the person.
- E. If a person is precluded from receiving a class one fingerprint clearance card pursuant to subsection B or C of this section, the division shall compare the employee's criminal history record with the list of criminal offenses that preclude the person from receiving a class two fingerprint clearance card. If the person's criminal history record does not contain any of the offenses listed in subsections F and G of this section, the division shall issue the person a class two fingerprint clearance card.
- F. A person who is awaiting trial on or who has been convicted of committing one or more of the following offenses in this state or similar offenses in another state or jurisdiction is precluded from receiving a class two fingerprint clearance card:
 - 1. Sexual abuse of a minor.
 - 2. Incest.
 - 3. First or second degree murder.
 - 4. Sexual assault.
 - 5. Sexual exploitation of a minor.
 - 6. Commercial sexual exploitation of a minor.
- 7. A dangerous crime against children as defined in section 13-604.01.
 - 8. Child abuse.
 - 9. Sexual conduct with a minor.
- 44 10. Molestation of a child.
- 45 11. Exploitation of minors involving drug offenses.

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- G. A person who is awaiting trial on or who has been convicted of committing one or more of the following offenses is precluded from receiving a class two fingerprint clearance card, except that the person may petition the board of fingerprinting for a good cause exception pursuant to section 41-619.55:
 - 1. Arson.
- 2. Felony offenses involving contributing to the delinquency of a minor.
- 3. Felony offenses involving sale, distribution or transportation of, offer to sell, transport or distribute or conspiracy to sell, transport or distribute marijuana, dangerous drugs or narcotic drugs.
- 4. Felony offenses involving the possession or use of marijuana, dangerous drugs or narcotic drugs.
 - 5. Burglary.
 - 6. Aggravated or armed robbery.
 - 7. Robbery.
 - 8. Kidnapping.
 - 9. Manslaughter.
 - 10. Assault or aggravated assault.
 - 11. A violation of section 28-1381, 28-1382 or 28-1383.
 - 12. Offenses involving domestic violence.
- H. Notwithstanding subsection G of this section, on receiving written notice from the board of fingerprinting that a good cause exception was granted pursuant to section 41-619.55, the division shall issue a class two fingerprint clearance card to the person.
- I. If the division denies a person's application for a class one or class two fingerprint clearance card pursuant to subsection C or G of this section and a good cause exception is requested pursuant to section 41-619.55, the division shall release the person's criminal history record to the board of fingerprinting.
- J. A person shall be granted a fingerprint clearance card if either of the following applies:
- 1. An agency granted a good cause exception before August 16, 1999 and no new crime is identified. The fingerprint clearance card shall specify only the program that granted the good cause exception. On the request of the applicant, the agency that granted the prior good cause exception shall notify the division in writing of the date on which the prior good cause exception was granted and the date of the conviction and the name of the offense for which the good cause exception was granted.
- 2. The board granted a good cause exception and no new crime is identified. The fingerprint clearance card shall specify the programs for which the board granted the good cause exception.
- K. The licensee or contract provider shall assume the costs of fingerprint checks and may charge these costs to persons required to be fingerprinted.

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- L. A person who is under eighteen years of age or who is at least ninety-nine years of age is exempt from the fingerprint clearance card requirements of this section. At all times the person shall be under the direct visual supervision of personnel who have valid fingerprint clearance cards.
- M. The division may conduct periodic state criminal history record checks for the purpose of updating the clearance status of current fingerprint clearance card holders and may notify the board of fingerprinting and the agency employing the person of the results of the records check.
- N. The division shall maintain the fingerprint records of an individual who has received a fingerprint clearance card pursuant to section 15-534 until the individual reaches the age of ninety-nine or two years after the division is notified that the individual is deceased or until the division is notified by the state board of education of the expiration of the individual's certificate. The state board of education shall notify the division of the expiration of an individual's certificate within sixty days of the expiration of the individual's certificate. The division shall include these records in the periodic state criminal history record checks conducted pursuant to subsection M of this section.
- 0. The division shall revoke a person's fingerprint clearance card on receipt of a written request for revocation from the board of fingerprinting pursuant to section 41-619.55.
- P. The division shall not issue a class one or class two fingerprint clearance card to a person if the division cannot determine, within fifteen business days after receipt of the person's state and federal criminal history record information, whether the person is awaiting trial on or has been convicted of committing any of the offenses listed in subsection B, C, F or G of this section. If the division is unable to make the determination required by this section and does not issue a class one or class two fingerprint clearance card to a person, the person may request a good cause exception pursuant to section 41-619.55.
- Q. If after conducting a state and federal criminal history record check the division determines that it is not authorized to issue a class one or class two fingerprint clearance card to a person, the division shall notify the agency that licenses or employs the person that the division is not authorized to issue a fingerprint clearance card.
 - R. The division is not liable for damages resulting from:
- 1. The issuance of a fingerprint clearance card to a person who is later found to have been ineligible to receive a fingerprint clearance card at the time the card was issued.
- 2. The denial of a fingerprint clearance card to a person who is later found to have been eligible to receive a fingerprint clearance card at the time issuance of the card was denied.

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S. The issuance of a class one or class two fingerprint clearance card does not entitle a person to employment.

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- T. If a court of competent jurisdiction sets aside a judgment of guilt pursuant to section 13-907 for a person who was convicted of an offense listed in subsection B, C, F, or G of this section, the person shall be issued a valid fingerprint clearance card unless a new crime is identified.
 - Sec. 7. Section 43-1001, Arizona Revised Statutes, is amended to read: 43-1001. <u>Definitions</u>

In this chapter, unless the context otherwise requires:

- 1. "Arizona adjusted gross income" of a resident individual means the individual's Arizona gross income subject to modifications specified in sections 43-1021 and 43-1022.
- 2. "Arizona gross income" of a resident individual means the individual's federal adjusted gross income for the taxable year, computed pursuant to the internal revenue code.
- 3. "Dependent" has the same meaning prescribed by section 152 of the internal revenue code EXCEPT THAT SECTION 152(b)(5) DOES NOT APPLY.
- 4. "Federal adjusted gross income" of a resident individual means the individual's adjusted gross income computed pursuant to the internal revenue code.
- 5. "Head of household" has the same meaning prescribed by sections 2(b) and 2(c) of the internal revenue code. Head of household includes an individual who meets the qualifications of a surviving spouse under section 2(a) of the internal revenue code.
- 6. "Married person" means a married person on the last day of the taxable year subject to the rules in section 43-1002.
 - 7. "Net income" means taxable income.
 - 8. "Person" means an individual.
- 9. "Single person" means any person who is not married or who was legally separated on the last day of the person's taxable year.
 - 10. "Spouse" means the wife or husband of the taxpayer.
- 11. "Taxable income" of a resident individual shall be Arizona adjusted gross income less the exemptions and deductions allowed in article 4 of this chapter.
- 12. "Taxpayer" means any person subject to a tax imposed by this chapter.
 - Sec. 8. Retroactivity
- Section 43-1001, Arizona Revised Statutes, as amended by this act applies retroactively to taxable years beginning from and after December 31, 2000.
- Sec. 9. Title
- This act shall be known as "The Equity Act of 2001".

APPROVED BY THE GOVERNOR MAY 8, 2001.

FILED IN THE C. TOP OF THE SECREPARY OF STATE MAY 8, 2001.

,	Onreconsideration
Passed the House March 20, 2001,	Passed the Senate April 30, 200/,
by the following vote: 31 Ayes,	by the following vote:Ayes,
24 Nays, 5 Not Voting	Nays,Not Voting
Juli	Manhae Junt
Speaker of the House Speaker of the House Chief Clerk of the House	President of the Senate Secretary of the Senate
EXECUTIVE DEPARTMENT OF ARIZONA OFFICE OF GOVERNOR	
This Bill was receiv	red by the Governor this
day of_	May 2001,
at 1:10 o'clock M. Secretary to the Governor Secretary to the Governor	
Approved this day of	
May ,2001.	
at 4: 20 o'clock PM.	
Governor of Arizona	
	EXECUTIVE DEPARTMENT OF ARIZONA OFFICE OF SECRETARY OF STATE
H.B. 2016	This Bill was received by the Secretary of State this day of, 20, 20,
	at 5:30 o'glock P M. Kilbery Hayler